

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 97

COUNTY OFFICERS AND EMPLOYEES - Members of recognized search and rescue units as auxiliary officers of county sheriff;
SHERIFFS - Members of recognized search and rescue units as auxiliary officers of county sheriff;
WORKERS' COMPENSATION - Coverage of members of recognized search and rescue units;
MONTANA CODE ANNOTATED - Sections 7-32-201 to 7-32-235, 7-32-2121(11);
OPINIONS OF THE ATTORNEY GENERAL - 36 Op. Att'y Gen. No. 6 (1975).

HELD: Members of a recognized search and rescue unit are auxiliary officers and must be provided full workers' compensation coverage when engaged in a search, training, or testing operation called and supervised by the sheriff.

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14 July 1988

John W. Robinson
Ravalli County Attorney
Ravalli County Courthouse
Hamilton MT 59840

Dear Mr. Robinson:

You have requested my opinion on the following questions:

1. Are members of recognized search and rescue units "auxiliary officers" and thereby covered under workers' compensation laws?
2. If members of recognized search and rescue units are not auxiliary officers, can they be covered by workers' compensation for liability purposes when such units are called out by the sheriff for a search or for mandated training or testing?

In 1985 the Legislature amended section 7-32-235, MCA, by adding subsections (1) and (3), MCA, which authorize a county to "establish or recognize one or more search and rescue units within the county" and to support the units financially by means of a property tax. Your questions concern the county's responsibility for providing workers' compensation coverage for members of a search and rescue unit which the county has recognized under section 7-32-235(1), MCA. If the members of such a unit are "auxiliary officers," then section 7-32-203(2), MCA, requires the law enforcement agency that utilizes them to provide full workers' compensation coverage while the auxiliary officers are providing actual service for the law enforcement agency.

Prior to 1977 there was little statutory guidance on questions concerning voluntary law enforcement groups such as search and rescue associations. See, e.g., 36 Op. Att'y Gen. No. 6 at 300 (1975). Following a statewide survey by the Montana Board of Crime Control which revealed wide variations in the performance, training, authority, and supervision of such groups, the 1977 Legislature enacted Senate Bill 152 (1977 Mont. Laws, ch. 85), now codified at sections 7-32-201 to 234, MCA, which addressed the regulation of all volunteer members of law enforcement agencies. Senate Bill 152 distinguished between "auxiliary officers" and "reserve

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officers," established qualification and training standards for reserve officers, and defined the role and authority of auxiliary officers.

In 1981 the Legislature added section 7-32-235, MCA, to the statutory provisions on reserve and auxiliary officers. The new statute provided that search and rescue units are under the operational control and supervision of the county sheriff having jurisdiction. When the 1985 amendments discussed above were enacted, this provision became subsection (2) of section 7-32-235, MCA.

The 1981 legislation which expressly gave the county sheriff supervisory control over search and rescue operations (1981 Mont. Laws, ch. 42) contained an instruction stating that the new statute was intended to be codified as an integral part of Title 7, chapter 32, part 2, MCA, and that the provisions of Title 7, chapter 32, part 2, MCA, apply to the new statute. To conform the statutory list of duties of the sheriff, the legislation also amended section 7-32-2121, MCA, by adding subsection (11), which requires the sheriff to "take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service."

Section 7-32-201(1), MCA, defines "auxiliary officer" as "an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities." (Emphasis added.) Subsection (3) defines "law enforcement agency" as "a law enforcement service provided directly by a local government."

In view of the legislative history and express language of the involved statutes, I conclude that members of a county-recognized search and rescue unit are "auxiliary officers" and thereby subject to the applicable provisions of Title 7, chapter 32, part 2, MCA. Cf. State v. Lemmon, 41 St. Rptr. 2359, 692 P.2d 455 (1984) (member of sheriff's posse is an auxiliary officer). Search and rescue unit members are unsworn part-time volunteers who provide a law enforcement service when called out on a search by the sheriff. While such auxiliary officers are exempt from the qualification and training requirements which apply to reserve officers (see § 7-32-234, MCA), I further conclude that the full workers' compensation coverage required by section 7-32-203(2), MCA, should also extend to any training or testing exercises which are conducted on the orders and

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at the direction of the sheriff. See § 7-32-231, MCA. While engaged in training or testing operations under the sheriff's supervision, the auxiliary officers are providing "actual service for a law enforcement agency" and should be insured by the agency under its workers' compensation coverage. See § 7-32-203(2), MCA.

These conclusions make it unnecessary to address your second question.

THEREFORE, IT IS MY OPINION:

Members of a recognized search and rescue unit are auxiliary officers and must be provided full workers' compensation coverage when engaged in a search, training, or testing operation called and supervised by the sheriff.

Very truly yours,

MIKE GREELY
Attorney General